

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 05-44481

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In the Matter of:

DELPHI CORPORATION, et al.

Debtors.

- - - - -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 25, 2008

9:17 AM

B E F O R E:

HON. ROBERT D. DRAIN

U.S. BANKRUPTCY JUDGE

HEARING re Motion for Order Authorizing Amendment to
Arrangement with General Motors Corporation

HEARING re Expedited Motion for Order Authorizing Debtors to
Implement Amended and Restated Global Settlement Agreement and
Master Restructuring Agreement with General Motors Corporation

HEARING re Expedited Fifth Supplement to KECP Motion Seeking
Authority to Continue Short Term At Risk Performance Payment
Program for Second Half of 2008

HEARING re Renewed Motion for an Order Authorizing the Official
Committee of Unsecured Creditors to Prosecute the Debtors'
Claim and Defenses Against General Motors Corporation

Transcribed by: Lisa Bar-Leib

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A P P E A R A N C E S :

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtors

333 West Wacker Drive

Chicago, IL 60606

BY: JOHN WM. BUTLER, JR.

ALBERT L. HOGAN III

SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP

Attorneys for Debtors

Four Times Square

New York, NY 10036

BY: KAYALYN A. MARAFIOTI, ESQ.

LATHAM & WATKINS LLP

Attorneys for Official Committee of Unsecured Creditors

53rd at Third

885 Third Avenue

New York, NY 10022

BY: ROBERT J. ROSENBERG, ESQ.

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON LLP

Attorneys for Equity Committee

One New York Plaza

New York, NY 10004

BY: RICHARD J. SLIVINSKI, ESQ.

BONNIE STEINGART, ESQ.

JENNIFER L. RODBURG, ESQ.

KASOWITZ, BENSON, TORRES & FRIEDMAN LLP

Attorneys for Ad Hoc Trade Committee

1633 Broadway

New York, NY 10019

BY: ADAM L. SHIFF, ESQ.

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP

1285 Avenue of the Americas

New York, NY 10019

BY: MICHAEL BALASCIO, ESQ.

1
2 K&L GATES LLP

3 Attorneys for Wilmington Trust Company, as Indenture

4 Trustee

5 599 Lexington Avenue

6 New York, NY 10022

7
8 BY: EDWARD M. FOX, ESQ.

9
10 LOWENSTEIN SANDLER PC

11 Attorneys for Securities Lead Plaintiffs

12 1251 Avenue of the Americas

13 New York, NY 10020

14
15 BY: S. JASON TEELE, ESQ.

16
17 WEIL, GOTSHAL & MANGES LLP

18 Attorneys for General Motors Corporation

19 767 Fifth Avenue

20 New York, NY 10153

21
22 BY: JEFFREY L. TANENBAUM, ESQ.

23 ROBERT J. LEMONS, ESQ.

1
2 STUTMAN TREISTER & GLATT, PC

3 Attorneys for the Senior Noteholders

4 1901 Avenue of the Stars

5 Twelfth Floor

6 Los Angeles, CA 90067

7
8 BY: ERIC D. GOLDBERG, ESQ.

9
10 KENNEDY, JENNIK & MURRAY, P.C.

11 Attorneys for IUE-CWA

12 113 University Place

13 New York, NY 10003

14
15 BY: THOMAS M. KENNEDY, ESQ.

16
17 U.S. DEPARTMENT OF JUSTICE

18 Office of the United States Trustee

19 33 Whitehall Street

20 21st Floor

21 New York, NY 10004

22
23 BY: TRACY HOPE DAVIS, ESQ.

24 BRIAN MASUMOTO, ESQ.

25
VERITEXT REPORTING COMPANY

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516-608-2400

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P R O C E E D I N G S

THE COURT: Please be seated. Okay. Delphi Corporation.

MR. BUTLER: Your Honor, good morning. Jack Butler, Kayalyn Marafioti and Al Hogan on behalf of the debtors in connection with the continuation of their thirty-fifth omnibus hearing. Your Honor, we were, when we adjourned on Tuesday, at matter number 4 on the agenda, the GSA and MRA amendment motion at docket number 14164. And we had been discussing some of the evidentiary matters and were preparing to enter into the declarations and the cross-examination. We had a chambers conference after which the Court announced that there would be an adjournment to today. And the statutory committee of General Motors and Delphi, the debtors, would engage in good faith negotiations regarding possible resolutions of some of the objections that had been filed. Those discussions, Your Honor, began at about 1:30 on Tuesday and continued until after midnight last night. And I'm pleased to report that there has been an agreement reached between the debtors, the creditors' committee and General Motors. I'm going to describe the basic economic terms. I'm not going to discuss the language; it's being drafted right now. I'm going to ask Your Honor for the Court's consideration that after I describe this, I'm going to ask the Court to adjourn until 11:00 this morning so that we can complete some work on this and also provide objectors, who

1 have filed objections who are not restricted from a
2 confidentiality perspective and therefore aren't aware of what
3 I'm about to say, the opportunity to consider these comments to
4 consult with their clients to discuss with us whether they wish
5 to continue pressing their objections to the motion. And I
6 need some time for those lawyers to have an opportunity to
7 consult with their clients. I've spoken to the lawyers
8 involved. They understand that I was going to ask for this
9 procedure today. And I think it will give us an opportunity to
10 have a more orderly hearing as to whatever's going to be
11 litigated beginning at 11:00, if that's acceptable to Your
12 Honor.

13 THE COURT: That's fine.

14 MR. BUTLER: Your Honor, what is being negotiated --
15 and I should also indicate on the record that subject to the
16 documentation being satisfactory to their respective counsel,
17 Delphi's board of directors has approved this first amendment.
18 And the creditors' committee has approved the first amendment
19 subject to counsel being satisfied with the language. In
20 addition, we expect to get approval from a special committee of
21 GM's board of directors during the course of the day today.
22 That is in process as well.

23 What we are proposing to do at the appropriate time
24 today is to mark as an exhibit, and it will be marked as
25 Debtors' -- or Joint Exhibit 160 when it's completed, is the

1 first amendment to the amended and restated global settlement
2 agreement. This amended and restated agreement will have
3 attached to it a revised -- among other things, a revised
4 Series D preferred stock term sheet that has a few changes in
5 connection with that that are part of the business transaction.

6 In addition to the general economic terms that I'm
7 going to describe in a moment relating to the creditors'
8 committee, Delphi and General Motors, I also want to point out,
9 for the benefit of the union representatives here, that that
10 amendment will also include clarifying language in Sections
11 401(e) through (j) of the amended and restated global
12 settlement agreement, that the releases that the union
13 releasing parties are being asked to provide in connection with
14 the 414(L) transaction are the releases under the applicable
15 benefit guarantied term sheets. The releases under the labor
16 MOUs would continue to be effective on the effective date of
17 the plan. There are two sets of releases. I know there was
18 some question as to which releases were being pulled forward.
19 The releases being pulled forward are under the benefit
20 guaranty term sheet that was approved as part of that labor
21 MOUs, but the broader releases and the labor MOUs would be
22 effective on the effective date of the plan. And this
23 amendment will clarify that language as we continue the
24 collective bargaining discussions with our unions.

25 In terms of the transaction that is being documented

1 now, the transaction, from the debtors' perspective,
2 essentially amends Article 4.04 of the GSA. And this is an
3 amendment to the GSA not to the MRA. And it deals with the
4 manner in which General Motors receives consideration and how
5 that consideration is ultimately -- elements of that
6 consideration are shared with general unsecured creditors
7 exclusive, for all purposes, holders of Toppers claims, as that
8 term is defined in the 2007 plan, the plan that's been
9 confirmed. And there are two scenarios here. The first
10 scenario is what occurs if there is an -- if the conditions
11 occur that would obligate GM under the GSA to accept preferred
12 stock in connection with a reorganization, there's one
13 treatment. And there's a second treatment if it turns out that
14 General Motors is not obligated to accept preferred stock and
15 there would be some other transaction here other than that type
16 of emergence, either not -- what I'll call a non-emergent
17 scenario but it could be if some other transaction doesn't meet
18 those conditions.

19 In the event that -- and let me deal with the latter
20 first. And that is, in the event that there is a circumstance
21 in which, under the GSA, GM would not be obligated to accept
22 the preferred stock in satisfaction of the administrative
23 claims proposed to be granted to them in those circumstances.
24 There would be a sharing of the proceeds of the realization of
25 that administrative claim on a fifty/fifty basis between

1 general unsecured creditors and General Motors. Up until there
2 had been a aggregate distribution on account of the allowed
3 general unsecured claims equal in value to 300 million. That's
4 to say, essentially, the first 600 million dollars of the
5 administrative claim would be shared. The proceeds would be
6 shared, not the claim itself. The proceeds would be shared so
7 that that would be the way in which we would deal with that
8 circumstance.

9 In connection with a reorganization as being
10 contemplated by the debtors and General Motors accepts the
11 preferred stock, there is an understanding -- and again, I have
12 committed to Mr. Rosenberg and to Mr. Tanenbaum that I'm
13 describing the general economic principle here. I'm not
14 describing the particular words. The words are being worked on
15 and they will be dealt with and need to be acceptable to
16 counsel to both General Motors and the creditors' committee as
17 well as to Delphi. But the essential understanding is that to
18 the extent that we have a reorganization and there's preferred
19 stock out there, there is going to be another sharing. And
20 that sharing would be a sharing that would result in -- and I'm
21 not going to go through the entire sharing mechanism here, but
22 that sharing would result in a sharing that would allow the
23 unsecured creditors to receive distributions exclusive of any
24 value received as a result of participation and any rights
25 offering or similar undertaking equal to twenty percent of

1 their allowed general unsecured claims. That is not a cap.
2 That is simply saying as to the extent that the circumstance in
3 these cases would require General Motors to share part of its
4 recovery under the preferred tranche, it would share it in a
5 way that would provide that the general unsecured creditors
6 would receive an amount equal to twenty percent of their
7 allowed general unsecured claims. The form of security that
8 would be distributed to unsecured creditors is common stock.
9 The form of security that would be shared with -- distributed
10 to General Motors would be preferred. So there would be the
11 sharing mechanism but if General Motors had to, essentially,
12 reallocate part of its preferred stock, that would be converted
13 to common and that would be what would be distributed to
14 unsecured creditors.

15 There's also an understanding, and this is similar to
16 as it was before, which is that unless GM consents, they would
17 not be required to accept this transaction if after taking into
18 account the kinds of reductions or sharing mechanisms I've just
19 described, GM did not receive stated value of less than 2.055
20 billion without their consent. So how ever this transaction
21 would work out, they would need to receive a stated value. And
22 that's important to the parties in terms of how we go forward
23 and conduct our exit financing and other transactions.

24 Last but not least, these are two other important
25 provisions. GM has agreed to eliminate some of the preferred

1 dividend terms that were in the what was called the "pick
2 dividend" in the Series D term sheet. And they have also
3 agreed that for a period of six months after the effective date
4 of the plan, the company, Delphi, the reorganized company, will
5 have the right to redeem up to one-half of the Series D
6 preferred stock at a price per share that's equal to eighty-
7 five percent of the stated value per share. We'll have that
8 option of redemption to be able to do that for a six month
9 period from the effective date.

10 Those are the essential economic terms. There's
11 obviously a fair amount of language that's been drafted that's
12 being reviewed and finalized that implements the terms of that.
13 It is -- from the debtors' perspective, represents at the end
14 of the day a contractual modification to Article 4.04 of the
15 GSA that I think, if the terms are acceptable, the creditors'
16 committee will advise the Court that they're withdrawing their
17 objection to the GSA.

18 What we would like to do, Your Honor, is to be able
19 to take a recess to finalize the language so we'll have Joint
20 Exhibit 160 for the Court to consider. We'd like an
21 opportunity to consult with other counsel representing other
22 objectors, give them an opportunity to consult with their
23 clients as to how we proceed and sort out how we would propose
24 to proceed at 11:00 this morning if that's acceptable to the
25 Court.

1 THE COURT: Okay. Anyone else want to say anything
2 about that limited procedural step? Okay. I'll adjourn the
3 hearing until 11, then, to enable you to do that. I have a
4 brief hearing at 10 that'll last about, I think, ten or fifteen
5 minutes. But you can leave your materials here. I don't think
6 it's going to get in anyone's way. And I'll plan on coming
7 back at 11 unless I hear otherwise.

8 MR. BUTLER: Thank you, Your Honor.

9 (Recess from 9:30 a.m. until 12:38 p.m.)

10 THE COURT: Please be seated. Okay. We're back on
11 the record in Delphi Corporation.

12 MR. BUTLER: Your Honor, again, the debtors
13 appreciate the Court's accommodations this morning. During the
14 interim recess, it's been very productive and I would like to
15 describe, if I may, where we are to the Court.

16 THE COURT: Okay.

17 MR. BUTLER: Your Honor, with respect to the matter
18 that's before the Court, the GSA and MRA amendment motion at
19 docket number 14164, there's now an agreed form of Exhibit 160,
20 which is the first amendment to the amended and restated global
21 settlement agreement. What I'd like to be able to do at the
22 break is to make a copy of this and provide it to the Court
23 during the lunch recess so the Court has an opportunity to
24 review it before we continue with the hearing.

25 THE COURT: Okay.

1 MR. BUTLER: In connection with the hearing, it is my
2 understanding that the objections of the unsecured creditors'
3 committee, at docket number 14168 and at docket number 14215,
4 the objections of CR Intrinsic Investors, LLC and Highland
5 Capital Management, L.P., at docket number 14211, and the
6 objection of Wilmington Trust Company, at docket number 14214,
7 based on this agreement, have been settled. And I'd ask
8 counsel to confirm that, please.

9 MR. GOLDBERG: Your Honor, Eric Goldberg for the
10 senior noteholders. I'll confirm that.

11 THE COURT: Okay.

12 MR. FOX: Edward Fox, Your Honor, on behalf of
13 Wilmington Trust Company, as indenture trustee. We confirm
14 that, too, and it's subject to an understanding with the
15 debtors which I've put in writing with Mr. Butler.

16 THE COURT: Okay.

17 MR. GOLDBERG: That's true with us as well, Your
18 Honor.

19 THE COURT: All right. And the committee's also
20 withdrawing its objection on this basis?

21 MR. ROSENBERG: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, we will be proceeding
24 with -- and I don't believe -- is counsel for the United Steel
25 Workers of America here in the courtroom? I don't think

1 they're proceeding with their objection at docket number 14216.

2 That leaves the IUE-CWA objections at docket number
3 14176 and at docket 14220. I think Mr. Kennedy would confirm
4 that they intend to proceed on a discreet but important issue
5 to them involving the twenty-six million dollar dispute. But
6 that they're not otherwise opposed to the motion and they have
7 no plans to cross-examine the witnesses.

8 MR. KENNEDY: Tom Kennedy, IUE, Your Honor. That is
9 correct.

10 THE COURT: Okay.

11 MR. BUTLER: All right. So, Your Honor, what I would
12 propose to do as -- and let me just briefly then also describe
13 because we do have witnesses here that have been brought in
14 from -- taken away from other meetings to be here. That
15 indicates that there is no party here objecting to the GSA/MRA
16 who has either withdrawn their objection or if they haven't
17 withdrawn their objection wishes to examine any of the
18 witnesses for this motion.

19 With respect to -- we have several other motions up
20 today and I'd like, if I may, Your Honor, just to be able to
21 address those because I'm going to ask Your Honor to excuse the
22 witnesses if Your Honor has no questions if that's okay.

23 With respect to the next matter that we'd be dealing
24 with and we indicated that it would be matter number 2 on the
25 agenda, the GM arrangement amendment approval motion at docket

1 number 14031. Mr. Sheehan is going to remain here in the
2 courtroom with respect to that particular matter. My
3 understanding is that -- let me just grab my notes here. Let
4 me get the right piece of paper. With respect to that, Your
5 Honor, the objection of CR Intrinsic Investors, LLC and
6 Highland Capital Management, L.P., at docket number 14082, is
7 similarly settled.

8 THE COURT: Okay.

9 MR. GOLDBERG: That's correct, Your Honor.

10 MR. BUTLER: Your Honor, we're going to, during the
11 lunch break, continue to discuss the objections filed by the
12 creditors' committee at docket numbers 14168 and at docket
13 number 14205. The only witness they've indicated they would be
14 interested in examining is Mr. Sheehan who is remaining in the
15 courtroom.

16 MR. ROSENBERG: Could you just identify those by
17 name, Jack?

18 MR. BUTLER: Those are your two objections filed to
19 the GM arrangement. You've not yet with --

20 MR. ROSENBERG: Oh, both. Okay.

21 MR. BUTLER: You've not yet withdrawn those.

22 MR. ROSENBERG: Yes, I'm sorry, correct.

23 MR. BUTLER: We're going to discuss them during the
24 lunch period. Mr. Sheehan will remain available in the
25 courtroom --

1 THE COURT: All right.

2 MR. BUTLER: -- if he needs to be called --

3 MR. ROSENBERG: That there were two confused me.

4 THE COURT: And he would be the only witness that the
5 committee might want to cross-examine --

6 MR. BUTLER: Correct.

7 THE COURT: -- on that motion?

8 MR. ROSENBERG: Yes, sir.

9 THE COURT: Okay.

10 MR. BUTLER: And, Your Honor, the other matter that
11 is before the Court, which is the fifth supplement of the KECP,
12 at docket number 14170, similarly, I don't believe that, at
13 this point -- the only -- bear with me one second. The only
14 objection filed, I believe, in connection with that was the
15 creditors' committee objection. And they have, at this point,
16 not yet withdrawn that objection but do not plan to examine
17 anyone in connection with it, I believe.

18 MR. ROSENBERG: That's correct. Just for your
19 understanding, Your Honor, we will withdraw our objection. I
20 would, however, like to put a statement on the record about it.

21 THE COURT: All right. Okay.

22 MR. ROSENBERG: Okay?

23 MR. BUTLER: And, Your Honor, I also believe that in
24 dealing with the item on the agenda, matter number 5, which is
25 the STN motion, at docket number 14167, my understanding is

1 that that is not being prosecuted today assuming the GSA-MRA is
2 approved.

3 MR. ROSENBERG: Upon approval -- if approved, Your
4 Honor, that presumably is moot.

5 THE COURT: All right.

6 MR. ROSENBERG: Okay?

7 THE COURT: It's not being denied. It's just not
8 being pursued at this time?

9 MR. ROSENBERG: Correct. If for some reason, Your
10 Honor does not approve the GSA/MRA, we will have to talk about
11 it.

12 THE COURT: Okay. All right. Well, with regard to
13 your other witnesses, I have reviewed the declarations in
14 connection with the three motions and also the objections that
15 are still out there although they may be resolved. And in
16 light of that review, I don't believe I will have questions for
17 the declarants other than perhaps of Mr. Sheehan if he's going
18 to be cross-examined.

19 MR. BUTLER: Thank you, Your Honor. So I would ask
20 Your Honor, with Your Honor's permission, if the remaining
21 declarants who are appearing here in support of the debtors'
22 motions be excused at the lunch break.

23 THE COURT: That's fine.

24 MR. BUTLER: Thank you, Your Honor.

25 THE COURT: So, Your Honor, what I would propose we

1 do, if it's acceptable to the Court, is take the lunch break at
2 this point. We'll get Exhibit 160 to you to look at over the
3 course of the lunch break. We have a few matters that we want
4 to prepare for in connection with Mr. Kennedy for the IUE
5 argument after we present the balance of our case. And then we
6 will also try to resolve the issue -- narrow the issues on the
7 two remaining motions over the course of the lunch break and
8 hopefully be ready to run a more efficient hearing this
9 afternoon.

10 THE COURT: All right. It sounds like you have a
11 fair amount to do in addition to maybe grabbing some lunch. So
12 2:30? Quarter to 3?

13 MR. BUTLER: 2:30, I think, is a good target.

14 THE COURT: Okay. 2:30 then.

15 MR. KENNEDY: Very well.

16 MR. BUTLER: Thank you.

17 MR. KENNEDY: Thank you.

18 THE COURT: And again, you can leave your materials
19 here.

20 MR. BUTLER: Thank you.

21 (Recess from 12:46 p.m. until 2:46 p.m.)

22 THE COURT: Please be seated. All right. We're back
23 on the record in Delphi Corporation.

24 MR. BUTLER: Thank you, Your Honor, and good
25 afternoon again. Jack Butler for the debtors resuming our

1 omnibus hearing. And we're back on the record in connection
2 with the GSA and MRA amendment motion at docket number 14164.
3 Since Your Honor -- during the lunch recess, the parties have
4 completed the finalization of the first amendment to the
5 amended and restated global settlement agreement. That has
6 been marked as Joint Exhibit 160. It's also been filed
7 publicly on the docket at docket number 14275.

8 THE COURT: Okay. And I've had a chance to review it
9 as well.

10 MR. BUTLER: Thank you, Your Honor. Your Honor, just
11 to complete the evidentiary record so that we have -- we were,
12 I think, through Exhibits 1 through 143 as we'd otherwise
13 described them on the record at the prior hearing. There have
14 been deposition designations that were submitted as Joint
15 Exhibit 144. The creditors' committee submitted additional
16 exhibits, 145 through 152. Those were the exhibits Mr.
17 Rosenberg made reference to at the earlier part of the hearing
18 back on Tuesday. We had identified some exhibits, Exhibits 153
19 through 159. We've agreed, given the settlement posture of
20 this case vis-a-vis the committee, to not seek the admission of
21 those. So we'll ask everything through 152 to come in. 153
22 through 159 would not come in. Exhibit 160 would come in, the
23 first amendment. And there has been an agreement that Mr.
24 O'Neil's deposition would be admitted in full, that's Exhibit
25 number 91, in support of the motion.

1 THE COURT: Okay. So hearing no objection to the
2 admission of those documents that the debtors now are seeking
3 to have admitted, I'll admit them into the record.
4 (Debtors' Exhibits 1-152, 160 were hereby received into
5 evidence as of this date.)

6 MR. BUTLER: Thank you, Your Honor. Your Honor, I
7 think we have also, as I indicated before the lunch recess, I
8 think we have disposed of all of the objections other than the
9 objections of the IUE-CWA at docket number 14176 and docket
10 number 14220. That was filed under seal because of some
11 personnel information that was indicated in it but it's been
12 available -- made available to the Court and the principal
13 parties here. Again, I'll ask if anyone from the United Steel
14 Workers is here with respect to objection 14216. So I don't
15 believe they're intending to prosecute. That was more for a
16 reservation of rights.

17 THE COURT: Well, that was their protective
18 reservation while they were in the middle of bargaining with
19 you.

20 MR. BUTLER: Right. Right.

21 THE COURT: Okay.

22 MR. BUTLER: So, Your Honor, I think the only
23 objector that we have left to deal with today, and it's on a
24 more limited objection, is Mr. Kennedy and the IUE-CWA
25 objections.

1 THE COURT: Okay. I reviewed that objection and the
2 debtors' response but I'm happy to hear counsel as well.

3 MR. KENNEDY: Good afternoon, Your Honor. Tom
4 Kennedy --

5 THE COURT: Good afternoon.

6 MR. KENNEDY: -- counsel for IUE-CWA. As you know,
7 we have objected to the amended GSA motion. We've made an
8 application that that motion, if it's approved, be approved on
9 the basis that there be a modification of Section 303(c) of the
10 GSA and the amended GSA that would provide that monies now
11 being paid under the agreement by General Motors directly to
12 the general funds of Delphi be instead directed to an IUE-CWA
13 OPEB VEBA which was created in connection with the 2007
14 negotiations between Delphi, GM and IUE.

15 We realize that this is a difficult motion. In the
16 context of tough economic times, the company is struggling to
17 exit bankruptcy with compromises by many. The easiest position
18 to take is that a deal is a deal; the IUE made a choice and
19 it's stuck with it. In fact, that's the position Delphi has
20 articulated in the final two paragraphs of its supplemental
21 response to the GSA objections. But this is not an effort on
22 the part of the IUE-CWA to obtain a better position vis-a-vis
23 its institutional entity or, in fact, its membership as a
24 whole. Exhibit 125 identifies 576 individuals whom the parties
25 intended specifically to be covered by the IUE-CWA OPEB VEBA at

1 the time of the 2007 negotiations. They range from Lashawn
2 Aaron (ph.) from the Clinton, Mississippi plant to a Gary
3 Zuraski (ph.) who is employed at the Warren, Ohio facility.
4 Those 576 individuals are looking to this IUE OPEB VEBA to
5 provide the substantive OPEB benefits that they were promised
6 by both General Motors and Delphi. The legal basis for this
7 motion is not just a cri de coeur or a request that fairness
8 dictates that result that we think that's true. But in the
9 context of a 9019 motion, it's longstanding duration that a
10 Court should grant such motion only under circumstances that
11 are just and fair.

12 But that is not the main basis on which we make this
13 application today. Bankruptcy Code 1114(g) has an expressed
14 provision dealing with the rights of retirees, solely and
15 uniquely retirees, because of the concern Congress had for
16 their welfare at the time of the adoption of 1114 -- could
17 approach this Court during a proceeding notwithstanding an
18 agreement that had previously been made and make an application
19 to, in effect, increase the funding for their benefits.

20 The August 16th, 2007 order that this Court entered
21 had approved the memorandum of understanding between General
22 Motors, Delphi and the IUE that appears as Exhibit 127 in your
23 book, Your Honor. At paragraph 5, it's clear and specific that
24 that order is being entered as a final and binding amendment to
25 existing retiree health and welfare benefits under Section

1 1114. The funding of the IUE-CWA OPEB VEBA was one of the
2 elements, an important, a cardinal element, in that 2007
3 settlement. And since the original order was entered under
4 1114, the IUE-CWA rights under 1114(g) are triggered.

5 The first proviso of Section (g) states that "any
6 time after an agreement modifying such benefits", referring to
7 OPEB type benefits, "is made between the trustee", in this
8 case, that would be Delphi, of course, "and the authorized
9 representative of the recipients", that's the IUE-CWA, "the
10 IUE-CWA may apply to the Court for an order increasing those
11 benefits which order shall be granted if the increase sought is
12 consistent with the standard articulated above in subsection
13 (3) of 1114(g)". That standard is "all the affected parties
14 are treated fairly and equitably and it is clearly favored by
15 the balance of the equities". In our view, as the facts we
16 will demonstrate briefly before Your Honor, we think compel.
17 The conclusion is that 2(b) fair and equitable to meet the
18 balance of the equities test, these 576 individuals cannot be
19 deprived of the OPEB benefit which they were promised and which
20 they had bargained for.

21 Delphi appropriately talks in its motions about the
22 achievement it has made in this proceeding, in fact, today, to
23 convince General Motors finally to accept 5.5 billion dollars
24 in OPEB obligations. There are thousands and thousands of
25 employees who are being covered whose OPEB is being assured

1 through this process. The only individuals who Delphi has
2 acknowledged were entitled to OPEB that are not being provided,
3 in effect, OPEB, and I'll tell you what I mean by that in a
4 second, are these 576 individuals. When they bargained for and
5 received a claim for twenty-six million dollars that would
6 support their OPEB, the anticipation was that that claim would
7 pay off at a hundred percent dollars.

8 That rule just changed. That plan's not out there.
9 If the current understanding were to take place, just to pick a
10 ballpark number, assuming that the equity trades at the level
11 that it's likely to be granted under the revised plan of
12 reorganization and there's a twenty percent recovery, there
13 would be five million dollars in the OPEB VEBA. The arithmetic
14 in this case is that Delphi and GM and the IUE agreed upon an
15 average funding of 45,000 dollars per person. Times 576
16 people, that's twenty-six million dollars. The actual cost of
17 providing OPEB are multiples of that. In fact, in the
18 evidence -- rather, in the record, I think, at 125, is an
19 analysis, an internal analysis, that mentions 132,000 dollars
20 as the present value of supplying OPEB to a retiree which is
21 consistent with my understanding as a labor lawyer about the
22 likely cost. We are not, assuming we get the 45,000 dollars
23 average, able to supply a OPEB-like benefit. But it's enough
24 money to provide some form of retiree health care. At twenty
25 percent of that number, at 8,000 dollars, 8,000 dollars cannot

1 supply a single year's coverage let alone the retirement for
2 life, health and life insurance benefits that are encompassed
3 within the term OPEB.

4 Now, this is a situation that, as I said, if it were
5 an institutional interest of the IUE, I could understand the
6 idea that claims having been made, claims having been accepted,
7 you live with whatever the claim comes in. But that's not what
8 this is about. This is about the specific insurance for these
9 individuals.

10 In Delphi's approach in this case after the agreement
11 was reached in August 2007, in our view was consistent with the
12 application we're making today. We've included in the record
13 letters that were sent to all 576 of these individuals. They
14 were sent by Delphi's personnel department. There's a
15 stipulation in evidence in Exhibit 128 that confirms that these
16 letters were sent to each one of these individuals. They were
17 advised that year coverage for post-retirement health and life
18 insurance will be under the Voluntary Employees' Benefit
19 Association, VEBA, to be established by the IUE-CWA. That was
20 repeated in correspondence which was directed to union
21 officials and, more importantly, correspondence delivered
22 particularly to these employees. In fact, the deal was that
23 people who did not get OPEB were entitled to a one percent
24 additional contribution to their 401K plan. Not that one
25 percent to a 401K plan is going to buy much. But at least it

1 was some gesture, some understanding that there had been groups
2 of people that were covered by OPEB, groups that weren't. The
3 people that weren't would be getting this benefit or this
4 amount of money in lieu of OPEB. That one percent additional
5 401K contribution doesn't apply to the individuals that are
6 covered by the IUE-CWA OPEB VEBA. So not only do they lose the
7 health and life insurance coverage but they lose the
8 contributions that would otherwise have been payable to them.
9 Given these letters, it's simply impossible to look at this
10 record and not understand that what was arrived at in the
11 summer of 2007 was an agreement that OPEB benefits themselves
12 would be paid. Not would be paid depending on the amount of
13 the claims, because the notices from Delphi do not reference a
14 claims experience screen that one would have to go through in
15 order to actually obtain the benefits. The obligation to
16 provide the benefits is on the VEBA. Delphi made that clear to
17 its employees. And without the application we're making today,
18 the VEBA will not have sufficient funds to make that promise
19 come true.

20 Mr. Miller, in his deposition, acknowledged that
21 there was a mismatch between what the intent of the parties had
22 been at the time the IUE OPEB VEBA was negotiated in August
23 2007 and where we are today because of what's likely to happen
24 with the claims experience. We're in a unique situation in our
25 view. We are looking not to capture money which is currently

1 in the estate. We're looking to correct a current provision in
2 the GSA in which twenty-six million dollars of GM money is to
3 be paid upon the effective date of the plan, by the way, to
4 Delphi general funds. In our view, it should have been to the
5 IUE OPEB VEBA. The concept that this money was paid in what
6 I'll call response to the claim that was given, the overall
7 claim, the 126 million dollar claim, in our view doesn't
8 withstand analysis. The twenty-six million dollars, if we
9 assume we had gotten the claim at a hundred percent value,
10 would have represented a recovery of less than twenty percent
11 of what the claim dollars might have paid out if you view the
12 twenty-six million from General Motors as some compensation for
13 the claim as a whole. If the claim is only paying off at
14 twenty percent and the twenty-six million dollars in dollars is
15 still --

16 THE COURT: I'm sorry. You have to walk me -- I'm
17 losing you on this point.

18 MR. KENNEDY: All right. I'm sorry. It's a little
19 complicated. I'm trying to illustrate something, perhaps
20 poorly, and I apologize. I'm responding to an argument that
21 was raised in various discussions I've had with the company
22 that that twenty-six million dollars was not specifically
23 related to the VEBA. It was just generally part of the
24 restructuring monies that were being paid to General Motors.

25 THE COURT: Paid by General Motors.

1 MR. KENNEDY: Being paid by General Motors to Delphi.
2 And there's really two responses to that. The first is that
3 the text of the agreement, the 303(c) text is exactly the same
4 as the text that were used for the UAW and later used for the
5 USW in which monies were paid directly to those unions for
6 VEBAs. So I think the text of the agreement doesn't support
7 that but --

8 THE COURT: Well, let's stop there.

9 MR. KENNEDY: Sure.

10 THE COURT: Do you take the view that the original
11 GSA provided that those funds would be earmarked for the VEBA?

12 MR. KENNEDY: No.

13 THE COURT: Okay.

14 MR. KENNEDY: The language of 303(c) has not changed
15 from the initial document to the amended document.

16 THE COURT: Okay. So, I'm still trying to understand
17 this point.

18 MR. KENNEDY: Well, what's changed, of course, is
19 that at the time of the original GSA, what was expected to be
20 the claim dollars, in other words, the match or mismatch
21 between outcomes, was not as it is today. As it is today, it's
22 an intolerable outcome.

23 THE COURT: No. I understand that point.

24 MR. KENNEDY: All right.

25 THE COURT: Okay.

1 MR. KENNEDY: And had the debtor, in all candor, not
2 been seeking to amend the GSA, we would perhaps be bringing
3 this notion on by a different route. But since they are, in
4 our view, we have the ability to come before the Court and make
5 the application to condition that approval upon a correction of
6 what we think represents an unjust result and an inappropriate
7 one given what the parties' intentions were at the time the
8 negotiations were had in 2007. And what I was --

9 THE COURT: Okay. Well, but when you say the
10 parties' intentions, though, you're not going so far as to say
11 that the original GSA should be subject to reformation, right?

12 MR. KENNEDY: No. I think the grounds for
13 reformation would require a mutual mistake and, in all candor,
14 I don't believe we could demonstrate a basis for alleging
15 mutual mistake. We certainly can allege a mismatch between
16 what the parties' intentions and expectations were at the time
17 of the agreement and where they are now.

18 THE COURT: Okay. All right.

19 MR. KENNEDY: The percentage argument I was trying to
20 use as an illustration is that if someone were viewing the
21 twenty-six million dollars from GM as an offset or a payment or
22 compensation for the 126 million dollar claim the IUE has,
23 obviously, the comparison --

24 THE COURT: No, I understand, because you have a much
25 bigger claim pool that you're falling into --

1 MR. KENNEDY: Yes.

2 THE COURT: -- to share in that twenty-six million.
3 I understand your argument now. I was --

4 MR. KENNEDY: Okay, great. Great. So we're really,
5 in our view, in a special circumstance. The GSA amendment
6 motion states at paragraph 9 that under the amended GSA that GM
7 is committed to assume financial responsibility for all of
8 Delphi's hourly post-retirement health care benefits and post-
9 retirement life insurance liabilities, collectively, OPEB. The
10 only way that will, in fact, be true, the only actual support
11 for that statement would be if the application we are making
12 now under 1114(g) is granted. And given two things, the first
13 that the statute permits and contemplates that in this kind of
14 situation where later in a case the equities would be such that
15 the retirees could come before you and ask for a modification
16 of orders previously entered and the fact that money
17 provides -- would not be taken from the estate but would be
18 coming from General Motors. And I'll note, Your Honor,
19 something I think is important. Obviously, this would have, in
20 some generalized sense, an impact on the estate. It's not a
21 meaningless number. It's not a number which is as large as
22 many of the other ones we talk about in this case pretty
23 frequently. But in this case, General Motors has authorized
24 the IUE to state in its discussions with the debtor that it did
25 not object to a change in 303(c) which would allow the payment

1 to be made directly to the IUE OPEB VEBA. And they are the
2 largest creditor of this estate. And I'll note that the UCC
3 has not filed an objection to our application either. So that
4 the only party contesting the application that we've made is
5 the debtor. And given the debtor's promises to these
6 individuals that they would have OPEB coverage from the IUE
7 OPEB VEBA, in our view, the balancing of the equities as such
8 requires the application we've made.

9 THE COURT: Okay. To be honest, I did not view the
10 filing in the context of 1114(g). I viewed it more as an
11 objection to the settlement with a suggestion on how to fix it.

12 MR. KENNEDY: We will accept it if that's the way you
13 want to provide it, Your Honor.

14 THE COURT: Well, no. I'm going somewhere else --

15 MR. KENNEDY: Oh.

16 THE COURT: -- which is that as far as the Court's
17 consideration of settlements is concerned, what I'm supposed to
18 focus on is the settlement from the perspective of the debtor
19 and the debtor's estate, generally. Obviously, one of the
20 things I would consider is how it affects issues in the case
21 including your client's issue. But ultimately, when I look at
22 a settlement, I'm supposed to look at the merits of the
23 settlement vis-a-vis the debtor, an issue the Second Circuit
24 addressed most recently in the Refco case where parties said
25 well, it's a bad deal for us and affects our rights in a way

1 that was sort of tangential to the overall picture of the
2 settlement.

3 I also generally don't believe that affirmative
4 relief, particularly under a unique section of the Code, 1114,
5 is really appropriate to be heard on this type of request. It
6 seems to me, therefore, particularly given the unique nature of
7 1114, that this is properly viewed as a request as opposed to
8 an objection to the settlement. The settlement provides for a
9 pot of money to the estate. Your clients want some of that
10 money to be allocated in a specific way. It seems to me that
11 given that they may well have rights under 1114(g), it'd be
12 better to tee it up so that the standards of 1114(g) can be
13 focused on, as opposed to in the context of, in essence, trying
14 to reform a settlement.

15 MR. KENNEDY: All right. We will do that, Your
16 Honor.

17 THE COURT: And I would say that, in particular, for
18 a couple of other reasons. One is I don't believe this is
19 properly viewed as a case of mutual mistake that when the
20 original GSA and the deal with your clients was struck. I also
21 don't believe there was a guarantee of any recovery,
22 specifically. I mean, I think everyone went in to the plan
23 knowing that the stated plan value was just that, a compromise
24 value. I mean, we spent hours on that topic at the
25 confirmation hearing. And, frankly, even the letters, which I

1 reviewed, the model letter, can certainly be read as saying
2 well, from now on, the VEBA's picking up your coverage,
3 whatever that is. Look to the VEBA for it. As opposed to
4 whatever you are owed today will be paid by the VEBA. That
5 being said, I think you're right that 1114 does uniquely have
6 this concept of looking again under -- however, circumstances
7 that are pretty prescribed in the statute. And I think it
8 would be better for the parties to actually couch it in those
9 terms than dealing with it in this record.

10 MR. KENNEDY: All right. Thank you, Your Honor.

11 THE COURT: Okay. And, Mr. Butler, you're free to
12 say whatever you want to say but that was my general reaction
13 to this.

14 Let me summarize it again. I don't view the argument
15 raised by the IUE as one that would be sufficient to defeat the
16 settlement. And, in fact, I think that, although it's couched
17 as an objection to the settlement, perhaps even the IUE
18 wouldn't want the settlement defeated. The settlement stands
19 on its own. It provides for certain consideration to the
20 debtor as a whole. I don't see a basis for reformation or for
21 forcing the parties to the settlement to redo it. But I don't
22 believe, on this record, I should properly rule on the request,
23 particularly since I think it is, if it's going to be formally
24 sought, one that would be under 1114 without having a proper
25 record under 1114, including a motion under 1114.

1 MR. BUTLER: Your Honor, I don't think, on behalf of
2 the debtors, we really have anything to say. We have a
3 different perspective, with all due respect, to the IUE-CWA and
4 their views. I think it's appropriate for us to respond to the
5 1114(g) record if and when it's brought and to develop our
6 views in connection with that record. And we will do so if and
7 when the estate's called upon to do so.

8 I think the IUE-CWA and Mr. Kennedy are aware of
9 Delphi's views which are not directed in any pejorative way to
10 the IUE-CWA. The fact of the matter is that we did negotiate a
11 transaction with them. We collectively bargained it. We
12 believe we're living up to our end of it. And if they believe
13 that they're entitled to benefits under 1114(g) and can
14 establish that to the Court, we'll be here in connection with
15 that record. We don't believe that they can but I don't think
16 it makes sense for me to argue -- present 1114(g) argument --

17 THE COURT: It's not in front of me.

18 MR. BUTLER: -- when it's not before you. So I think
19 I should just stop there.

20 THE COURT: Okay. All right. And, of course, you
21 have an ongoing relationship with the -- you -- the company has
22 an ongoing relationship with the IUE.

23 MR. BUTLER: Right.

24 THE COURT: And maybe --

25 MR. BUTLER: We do, Your Honor --

1 THE COURT: -- these issues may be dealt with as part
2 of that ongoing relationship in some way, shape or form, too.

3 MR. BUTLER: We do, Your Honor. It's an important
4 relationship. And I should tell the Court, just to say it here
5 because we've worked very closely with the IUE-CWA. They have
6 worked in a lot of ways to be cooperative with the company and
7 we've tried to do the same with them. I will point out they
8 are the first of the unions to have executed their
9 implementation agreements -- or to agree to them. I don't if
10 they're actually signed yet but the IUE-CWA has agreed to the
11 terms of the implementation and will be the first population to
12 be included in the -- as people do the bucketing, to be
13 considered to be in the bucket in the net liability transfer if
14 Your Honor approves this. So they already have spent a lot of
15 time and effort on behalf of their negotiating leadership to do
16 that in order to represent the interest of their members.

17 So we respect their issues and their views. We
18 regret that we have this difference of view. But we have one
19 and we'll deal with it in the 1113(g) (sic) context or
20 otherwise in our discussions with them.

21 THE COURT: Okay. 1114.

22 MR. BUTLER: 1114, excuse me.

23 THE COURT: Okay. Thank you.

24 MR. BUTLER: Your Honor, I think Your Honor had
25 indicated this matter had been fully briefed. I'm not going to

1 make a closing argument in the context of where we are. I
2 don't know that we need to in terms of the record. I will --
3 some of the, I think, benefits of this agreement are spelled
4 out in the papers. They're also spelled out in Joint Exhibit
5 85 which is the group of demonstrative exhibits that go through
6 and demonstrate the amount of additional contributions and how
7 the amended GSA and amended MRA work.

8 Your Honor had expressed concerns about 1127. I
9 recognize that both 1127 objectors have withdrawn their
10 objections in that regard. We did file a supplemental brief on
11 that subject --

12 THE COURT: I read that.

13 MR. BUTLER: -- so that the record was fully
14 developed, from our perspective, on that issue as well. So,
15 unless Your Honor has specific questions of us, I would --

16 THE COURT: One of your colleagues has something.

17 MR. BUTLER: Oh. Yeah, I had to get to -- before a
18 bunch of people stand up, there are a litany of things I'm
19 supposed to say on behalf of various people. So let me read
20 those statements --

21 THE COURT: Okay.

22 MR. BUTLER: -- into the record, if I may. Just one
23 moment here. I do have them. They're even appropriately
24 marked for me.

25 Your Honor, one of the first things that I did want

1 to address was what was accomplished in the first amendment
2 that's now been published was an agreement, as I've described
3 it earlier, in terms of a contractual allocation of prospective
4 GM contributions -- or compensation, rather, to general
5 unsubordinated unsecured creditors as it has been outlined in
6 the first amendment under the circumstances and subject to the
7 terms and conditions of that amendment. What we did not do,
8 and it was by design and after discussion, is we did not
9 attempt in the context of a GSA MRA to come to the Court with a
10 full plan framework. We intend, if Your Honor approves this,
11 and we're able to implement the 414(L) next week and pull
12 forward the effectiveness of the GM contributions to the
13 estate, our intention is to move forward rapidly in examining
14 what our options are in what are, obviously, extraordinarily
15 complex capital markets and in negotiations and discussions
16 with stakeholders who have expressed interest in providing
17 financial support to the company in connection with emergence.
18 Once they had confidence in that the new plan actually -- I'm
19 talking now the financial plan that was publicly released back
20 earlier this month, that that plan was, in fact, the plan the
21 company was going to go forward with. And so we need to get
22 about that business as part of those discussions. We intend to
23 continue the plan framework discussions or the POR modification
24 discussions with our joint statutory committees, both the
25 creditors' committee and the equity committee. And I think

1 it's clear to say, but I'll just sort of say it, there's
2 nothing in this settlement today other than the agreement on
3 how we're addressing Article 4.04 of the GSA that has any
4 implication whatsoever in connection with the ultimate plan
5 modifications the debtors will put forward. That is to say, we
6 have agreed on how we're going to be treating General Motors'
7 claims. There has been an agreement with the creditors'
8 committee in 4.04 as to the mechanisms that have been adopted
9 in the first amendment. But that is -- while everyone reserves
10 their rights and everyone has a point of view and there are
11 going to be some spirited discussions among the parties as to
12 how we should shape the rest of the plan framework, that is
13 work ahead of us. And I just wanted to -- and work that we
14 have already started and we'll be moving forward very rapidly.
15 It is our intention to file modifications under Section 1127 to
16 the plan, as soon as we reasonably can, in order to accomplish
17 an emergence from Chapter 11 as soon as practicable. And that
18 is our goal, we're working very hard at it. But I did want to
19 make it clear today as to what the scope of this hearing is.

20 THE COURT: Okay.

21 MR. BUTLER: Second, Your Honor, in connection with
22 the GSA MRA amendments, we did receive inquiry from the MDL
23 ERISA plaintiffs' class counsel concerning the scope of the
24 release to the GM related parties. As Your Honor will recall,
25 in the MDL ERISA action, in addition to claims against the

1 debtors, the plaintiffs asserted claims against a GM related
2 party entitled -- by the name of G-M I-M-C-O, GM IMCO. As part
3 of the settlement of the MDL ERISA action approved by the Court
4 and by the district court in Michigan, the MDL ERISA plaintiffs
5 will grant release to GM when that settlement becomes
6 effective. The point of this statement on the record here is
7 to clarify that it is not the debtors' intent, the releases
8 under Section 401(a) or (b) of the amended GSA, the ones to be
9 effective prior to the effective date of a plan, extended the
10 claims asserted in the MDL ERISA action. And that is an
11 accurate statement. We agreed to say it. We are obliged --

12 THE COURT: And GM understands that, too?

13 MR. BUTLER: I believe they do.

14 THE COURT: Okay.

15 MR. BUTLER: And they're here. We have assumed
16 obligations about third party releases in connection with the
17 plan. We understand them and we are committed to them.

18 THE COURT: Okay.

19 MR. BUTLER: All right. Let me look around for a
20 moment and see if anyone is -- excuse me one second. Mr.
21 Tanenbaum just wanted me to make clear that the releases I'm
22 describing under the plan are third party releases. I think we
23 understood that.

24 THE COURT: Right.

25 MR. BUTLER: I thought I said it but I'll say it

1 again to make sure the record's clear. Anyone else?

2 All right. I think, Your Honor, I have made the
3 statements that we committed to make in connection with
4 consideration of this motion. And subject to questions Your
5 Honor may have, the debtors would rest on the evidentiary
6 record and the pleadings that have been filed in this case.

7 THE COURT: Okay. As I said, I did get a chance to
8 review the first amendment to the GSA. I just had one
9 question. I think it's probably worth clarifying this on the
10 record. Paragraph 8, the phrase at the end there, "equal in
11 value of up to 300 million", do you see that?

12 MR. BUTLER: Um-hmm.

13 THE COURT: That refers to the amount of the
14 distribution, right, not to the amount of the unsecured claims?

15 MR. BUTLER: Correct.

16 THE COURT: So --

17 MR. BUTLER: Yes.

18 THE COURT: -- you could read a comma in there to --

19 MR. BUTLER: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. BUTLER: That is correct.

22 THE COURT: All right. Okay. Does anyone else have
23 anything to say on this matter? All right. The debtors sought
24 approval of an amendment to the two agreements with GM,
25 referred to in this case as the GSA and the MRA. There were a

1 handful of objections to that motion all of which, based on my
2 reading of them, went to features of the GSA as opposed to the
3 MRA. The MRA, I guess, in some ways deals more with the
4 ongoing relationship as a business matter between GM and the
5 debtors. And the GSA deals more with the treatment of GM in
6 the bankruptcy case as far as its claims are concerned as well
7 as the resolution of the relationship between the debtors and
8 GM and the debtors' pension liabilities.

9 The parties have since negotiated, in light of the
10 objections, which is stated on the record, with the exception
11 of the IUE-CWA's limited objection which has already been dealt
12 with, have since been withdrawn in light of the first amendment
13 to the amended and restated GSA. Based on my review of that
14 amendment as well as, of course, the withdrawal of the
15 objections, and my review of the declarations and other
16 exhibits submitted in support of the motion and the GSA itself,
17 I find that the GSA is a valid and proper settlement of the
18 respective claims and rights of the debtors and GM.

19 The objections raised two fundamental issues that I
20 should address briefly that go not to the merits of the
21 settlement as a function of the rights between the parties but
22 rather to bankruptcy process issues, guided first and foremost
23 by Iridium Operating LLC, 478 F.3rd 452 (2nd Cir. 2007). I
24 believe that as originally drafted, and certainly as amended as
25 well, the settlement does not run afoul of the concerns raised

1 by the Second Circuit in Iridium regarding the impact of a
2 settlement on the absolute priority rule. The amendment does
3 talk about allocation of -- or a redistribution by GM of its
4 recoveries under certain scenarios to other creditors. But
5 given the way that the settlement is structured, that
6 reallocation, to my mind, doesn't violate the absolute -- or
7 wouldn't violate the absolute priority rule and therefore
8 doesn't implicate the special considerations and require the
9 special findings that Iridium required.

10 The objections dealt also with the suggestion that
11 the amendment to the GSA that the debtors first sought approval
12 of constituted a sub rosa plan and therefore should not be
13 approved in the context of a motion under 9019 and 363(b). It
14 seemed to me that but for one issue, those objections were not
15 well taken and that, again, consistent with Iridium, and also
16 the evolution of the case law under -- on the sub rosa issue,
17 including in the Fifth Circuit where the issue, I think, first
18 originated, as most recently articulated in the Cajun case
19 which Judge Gropper and Judge Romero cited in the Tower
20 Automotive case. It seems to me that, again, with this one
21 issue, the original amendment would not have run afoul of the
22 sub rosa plan concern. I believe that with the agreement of
23 the objectors and, first and foremost, of the unsecured
24 creditors' committee, that one issue that I had has been
25 resolved. That concern, in my mind, was that the true benefits

1 of the settlement could potentially be viewed if the evidence
2 ultimately showed this, and, of course we never got to the
3 evidence because of the consensus, as being so contingent upon
4 approval of a modified plan that it would have forced the
5 parties into a particular straightjacket in their plan
6 negotiations. I don't know whether that argument would have
7 won out based on the evidence. But I do know now that the
8 committee and the other objectors are satisfied enough with the
9 modifications to the plan that they don't feel they're in that
10 straightjacket anymore. And, of course, everyone's rights are
11 reserved with regard to an ultimate modification of the plan or
12 any other reorganization scenario.

13 Finally, it was argued by two of the objectors that
14 the motion would have affected an impermissible modification of
15 the confirmed plan under Section 1127(b). Again, this, to me,
16 as even acknowledged by the debtors' supplemental brief, is
17 somewhat uncharted territory but one provision of the plan,
18 notwithstanding all of the provisions of the confirmation order
19 and the plan that ranks the priority of various agreements
20 putting the GSA as the governing agreement. It troubled me in
21 that regard and that was the provision in Section 12 regarding
22 amendments and the committee's rights over amendments that
23 materially affected their constituents. Again, the party -- or
24 the objecting party with that right is no longer objecting.
25 And, in my mind, given that fact and given the modification

1 rights in the GSA as incorporated in the plan and the
2 confirmation order, the motion at this point seems to be, to
3 me, more in keeping with the circumstances in the first Johns
4 Manville amendment as well as the Mirant case and the Reserve
5 Capital case where there was authority to amend and, therefore,
6 the Court said 1127 didn't apply. We may leave for another day
7 the issue of what Article 12 means. But at this point, I view
8 the withdrawal of the objections as resolving that issue for
9 today.

10 So, separate and apart from those considerations,
11 given the consensual nature of the relief before me and the
12 case the debtors have made as to why it makes a good business
13 decision to structure a settlement with GM now in this way,
14 I'll approve the motion.

15 I've reviewed the order and I see that it includes
16 the language that the United States wanted --

17 MR. BUTLER: Your Honor, we're still --

18 THE COURT: -- in return for their withdrawal of
19 their objection.

20 MR. BUTLER: Right.

21 THE COURT: Are you still working on other aspects of
22 the order?

23 MR. BUTLER: Yeah. We're still working on some of
24 the language, Judge.

25 THE COURT: All right.

1 MR. BUTLER: We'll submit that order either later
2 today or tomorrow.

3 THE COURT: Okay.

4 MR. BUTLER: But I want to make sure that,
5 particularly as to the committees, General Motors and we that
6 we're on the same wavelength on the --

7 THE COURT: All right. As far as the findings were
8 concerned, I was comfortable with the findings.

9 MR. BUTLER: Thanks, Judge.

10 THE COURT: I'll look for that order to come in.

11 MR. BUTLER: Thank you very much, Judge.

12 THE COURT: Okay. So I believe that leaves the --

13 MR. BUTLER: Let me just try and get rid of the STN
14 motion at this point in time. Mr. Rosenberg, do we have
15 agreement that the STN motion is withdrawn without prejudice?

16 MR. ROSENBERG: Without prejudice, correct, we have
17 such an agreement.

18 THE COURT: Okay. So I'll treat that as withdrawn
19 without prejudice.

20 MR. BUTLER: Thank you, Your Honor. Your Honor, I
21 would next move then -- just give me just a moment here.

22 (Pause)

23 MR. BUTLER: Your Honor, I'd next move to item 2 on
24 the agenda. And item 2 is our motion for an order authorizing
25 an amendment to an arrangement with General Motors Corporation

1 approved pursuant to the second DIP extension order found at
2 docket number 14031. And, Your Honor, there were three
3 objections filed to this order. As we talked about before the
4 lunch recess, the objection from Highland Capital and CR
5 Intrinsic at docket number 14082 has been withdrawn. There was
6 also two objections filed by the creditors' committee, a
7 preliminary and final objection at docket number 14168 and
8 docket 14205. I'd like to address those right now in just a
9 moment.

10 THE COURT: Okay.

11 MR. BUTLER: Your Honor, my understanding in
12 discussing this with Mr. Rosenberg before the hearing is that
13 the creditors' committee is willing to withdraw their
14 objections to this motion provided there is a clarification on
15 the record that General Motors would concur with, that would
16 just make it very clear that the approval powers or approval
17 rights under the second tranche of this GM arrangement, the
18 tranche we're asking Your Honor to approve today, which, among
19 other things, has a requirement in it that says this wouldn't
20 become available unless by October 31st we file plan
21 modifications that were acceptable to General Motors. And the
22 words are actually in the amendment; I'm not quoting them
23 precisely.

24 The creditors' committee wanted, I think, a
25 straightforward and sensible clarification that the exercise of

1 those rights by General Motors cannot be in any way materially
2 inconsistent with the rights and obligations of General Motors
3 that they have just assumed now in this GSA and MRA that the
4 Court's approved. I think General Motors agrees with that
5 clarification.

6 THE COURT: Yeah. I see its counsel nodding. Okay.
7 All right.

8 MR. BUTLER: Mr. Tanenbaum agrees with that; that's
9 the corroboration Mr. Rosenberg was seeking on the record. And
10 I believe, with that, the creditors' committee is prepared to
11 withdraw their objections to the LSA.

12 MR. ROSENBERG: Yes, Your Honor. I just think that
13 it's sufficiently important to us and I'd like it to go beyond
14 the record into the order or whatever.

15 THE COURT: I'm sorry. I missed that last -- I
16 couldn't hear that last --

17 MR. ROSENBERG: I said, Your Honor, that I would like
18 this proviso, which is absolutely crucial in terms of the
19 creditors' committee's willingness to go along with this, to
20 appear either in an amended document, the order, somewhere
21 beyond the statement on the record.

22 THE COURT: Seems to me it could be in the order.

23 MR. BUTLER: We'll be happy to -- we're happy to put
24 it in the order. I'm sure we can work on a sentence that will
25 be acceptable --

1 MR. ROSENBERG: Very good. Thank you.

2 THE COURT: I think it would have been unreasonable
3 to have taken a contrary position if that ever came to pass.
4 But now it's laid out so that no one has to argue what's
5 reasonable or unreasonable.

6 MR. ROSENBERG: That was not a fight we wanted to
7 have, Your Honor.

8 THE COURT: Right. Okay.

9 MR. BUTLER: So, Your Honor, with that understanding,
10 which we'll put into an amended order we'll submit to Your
11 Honor, this matter's uncontested. There are some exhibits.
12 There are fifty-nine exhibits that have been presented for
13 this. They are the declaration of Mr. Sheehan at Debtors'
14 Exhibit 1, four presentations to the board, Exhibits 2 through
15 5, Exhibit 6, a presentation to the statutory committees. And
16 there are excerpts of a series of those presentations which are
17 Exhibits 7 through 10. Court documents from 11 to 22. 23 was
18 reserved. Some additional court documents about the prior GM
19 arrangement from 24 through 27. And then the applicable
20 financing motion starting at Exhibit 28 all the way through --
21 all the way through, actually, 51. And then, finally, Your
22 Honor, there are some relevant documents that have been
23 identified, some other excerpts and some things the objectors
24 had identified which are all the way through 59 which is Mr.
25 Degel's (ph.) deposition. So, Your Honor, we'd move the

1 admissions of Exhibits 1 through 59.

2 THE COURT: And there were no objections to --

3 MR. BUTLER: No.

4 THE COURT: -- their admissibility?

5 MR. BUTLER: We had a meet and confer on this. There
6 are no objections to these.

7 THE COURT: Okay. I'll admit them. As I said
8 before, I reviewed Mr. Sheehan's declaration --
9 (Debtors' Exhibits 1-59 in support of GM arrangement motion
10 were hereby received into evidence as of this date.)

11 MR. BUTLER: Your Honor, given the --

12 THE COURT: -- and I have no questions of him. It's
13 clear to me from that declaration and from the agreement itself
14 and from your remarks that the debtors and their key
15 constituents are going to be very busy over the next few weeks.
16 But I trust they'll use that time well. So, this loan will, I
17 believe under these circumstances, assist them and
18 consequently, I'll approve the motion.

19 MR. BUTLER: Thank you, Your Honor. We appreciate
20 that. We'll submit an amended order, that has the language in
21 it we've discussed, to chambers.

22 THE COURT: Okay.

23 MR. BUTLER: Your Honor, the last matter on this
24 agenda is matter number 6 on the agenda. It is the debtors'
25 fifth supplement to the KECP motion, the original motion filed

1 at docket number 213. This deals with the second half AIP
2 program for the second half of 2008 at docket number 14170.
3 The only objection was an objection to -- a limited objection
4 filed by the creditors' committee to a specific part of the
5 program which we'll address in just a moment. I would
6 indicate, Your Honor, that in terms of the evidentiary record,
7 there are thirty-one exhibits that have been agreed to in
8 connection with the meet and confer. They would include the
9 declarations of Mr. Sheehan and Mr. Naler at Exhibits 1 and 2;
10 AIP documents dealing with the financial performance targets
11 and PALE curves and the adjustment protocol at Exhibits 3 and
12 4. Materials presented to the statutory committees at Exhibit
13 5. Court documents concerning the fifth supplement, Exhibits 6
14 through 13. Some other relevant court documents then filed at
15 Exhibits 14 through 25. Our demonstrative package which we use
16 at these hearings at Exhibit 26. And then some additional
17 exhibits that were designated Exhibits 27 through 31. These
18 have been agreed to during our meet and confer and there is no
19 objection that I'm aware.

20 THE COURT: Okay. Well, go ahead, Mr. Rosenberg. No
21 objections?

22 MR. ROSENBERG: Is this the time, Your Honor?

23 THE COURT: Well, this is just on the exhibits.

24 MR. ROSENBERG: Oh, I'm sorry.

25 THE COURT: So they'll be deemed --

1 MR. ROSENBERG: Nothing on the exhibits.

2 THE COURT: They'll be admitted. They're admitted.
3 (Debtors' Exhibits 1-33 in support of fifth supplement to the
4 KECP motion seeking authority to continue AIP program for
5 second half of 2008, were hereby received into evidence as of
6 this date.)

7 MR. BUTLER: And I think Mr. Rosenberg indicated he
8 wanted to make a statement about the creditors' committee
9 objection.

10 MR. ROSENBERG: Is this the time?

11 THE COURT: Yes.

12 MR. ROSENBERG: Thank you, Jack. Thank you, Your
13 Honor. I guess I just would like to have the record reflect
14 our perspective on this issue. We do withdraw the objection at
15 this time. But based on the totality of papers that we put
16 before Your Honor in connection with the various motions that
17 were on this week, I think it should be obvious to Your Honor
18 that the committee was enormously frustrated by what it
19 perceived as the absence of progress and, in particular,
20 frustrated by the process pursuant to which we were brought to
21 court this week in connection with the approval of the GSA.
22 All's well that ends well. We are pleased with the result
23 today. We are pleased that the 414(L) transaction can now
24 occur. It was important to everybody. But it had to occur on
25 reasonable terms and we believe that now it has. And

1 accordingly, coming full circle, that obviously is progress
2 that somewhat ameliorates the committee's frustration and
3 hopeful -- and therefore withdrawal of the AIP objection to the
4 extent that it was aimed solely at the members of the Delphi
5 strategy board who, in our judgment, are the people to move
6 this process forward.

7 But I guess the point of the statement is to say that
8 we hope that we do not have a repeat of the kinds of
9 frustrations that brought us to have to file the motion in the
10 first place. And I hope we have a more cooperative and
11 deliberative process going forward toward the end of the year
12 as we hopefully march toward an exit from this case.

13 THE COURT: Okay.

14 MR. BUTLER: Your Honor, I don't think it pays good
15 dividends in the context of what is being completed as a
16 consensual hearing to have a lengthy rebuttal to Mr.
17 Rosenberg's comments but I will tell you that we understand
18 that reasonable people can have differences of view about how a
19 particular subject ought to be treated or about demands of a
20 particular stakeholder or constituency. The debtors don't have
21 the luxury of looking just to one individual creditor, one
22 individual stakeholder. We have to exercise our fiduciary
23 responsibilities, as our directors and officers understand them
24 under Delaware law and under applicable bankruptcy law, to all
25 of our stakeholders, obviously in accordance with the

1 Bankruptcy Code and other applicable law.

2 I think that we have a profound sense of
3 disappointment that when a particular stakeholder, be it the
4 creditors' committee or anyone else, doesn't get precisely what
5 they want that they file papers that claim breach of fiduciary
6 duty or that they file papers that are intended to be, from the
7 debtors' perspective, some type of retribution against
8 particular people at Delphi. I think it's unfortunate. I
9 obviously acknowledge Mr. Rosenberg's statement that it
10 reflects frustration on behalf of people. I don't think that
11 frustration is something owned only by one group of people
12 here. This has been an extraordinarily complex process. I
13 have been doing this for somewhat up -- almost thirty years. I
14 can't imagine a time or remember a time in my professional
15 career that we have had to deal with the headwinds that a large
16 complex restructuring is dealing with today. And I think that
17 the company is doing all that it can do to fulfill its
18 fiduciary responsibilities. I think people are working twenty-
19 four/seven and trying to make the right decisions. I am
20 pleased that the debtors were able, at the end of the day, to
21 participate in an environment that allowed people to come
22 together and resolve their differences. This will not be the
23 first nor the last case that is decided at the courthouse steps
24 on some issues. That seems to be the way the process goes, no
25 matter what the design might be.

1 But I would simply say to Your Honor that, from the
2 debtors' perspective, the debtors firmly believe that their
3 officers and directors have and will continue to exercise their
4 fiduciary responsibilities. And I hope in the future if there
5 are differences of views, we can focus on the differences of
6 views rather than a broad assassination of character as we go
7 forward. Thank you.

8 THE COURT: Okay. Well, one thing is very clear to
9 me which is that the debtors and their two committees and GM,
10 for that matter, I think all appreciate the same goal which is
11 to have a reasonable rational exit from Chapter 11 in the
12 next -- before year-end. And as I think is evidenced by the
13 fact that you all worked around the clock over the last few
14 days, I trust that level of creativity and analysis will
15 continue.

16 As far as the motion itself is concerned, it's
17 unopposed at this point. It was opposed not on the nature
18 of -- or on the basis of specific targets or the business plan
19 upon which it was based or the process by which the targets of
20 the business plan were developed, which are laid out in the
21 declarations, but more in a sense of view that the top people
22 should have been doing different things in the bankruptcy case.
23 That objection's been withdrawn and as far as the motion itself
24 is concerned, it appears to me consistent with prior motions
25 for these six months short term incentives to be appropriate

1 and therefore I will approve it.

2 MR. BUTLER: Judge, thank you very much. That
3 concludes the matters that are on the omnibus agenda for this
4 month.

5 THE COURT: Okay.

6 MR. BUTLER: Thank you very much for the Court's
7 accommodations.

8 THE COURT: Since you're going over the order, let me
9 just give you the couple of --

10 MR. BUTLER: Okay.

11 THE COURT: -- changes I had on it so you can have
12 that.

13 MR. BUTLER: Thanks, Judge.

14 THE COURT: Okay.

15 (Whereupon these proceedings were concluded at 3:49 p.m.)
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I N D E X

E X H I B I T S

PARTY	NO.	DESCRIPTION	ID.	EVID.
Amended and Restated GSA/MRA Motion:				
Debtors'	1-143	Previously identified exhibits		22,4
		in support of amended GSA		
		motion		
Joint	144	Deposition designations		22,4
Debtors'	145-152	Exhibits submitted by creditors'		22,4
		committee		
Debtors'	160	First amendment to the GSA/MRA		22,4
		agreement		
GM Arrangement Motion:				
Debtors'	1	Declaration of Mr. Sheehan		51,9
Debtors'	2-5	Presentations to the board		51,9
Debtors'	6	Presentations to statutory		51,9
		committees		
Debtors'	7-10	Excerpts from series of		51,9
		presentations to statutory		
		committees		
Debtors'	11-22	Various court documents		51,9

I N D E X, cont'd

E X H I B I T S

PARTY	NO.	DESCRIPTION	ID.	EVID.
GM Arrangement Motion, cont'd:				
Debtors'	24-27	Additional court documents re		51,9
		prior GM arrangement		
Debtors'	28-51	Applicable financing motion		51,9
		documents		
Debtors'	52-59	Various relevant documents		51,9
Fifth Supplement to KECP Motion:				
Debtors'	1	Declaration of Mr. Sheehan		53,1
Debtors'	2	Declaration of Mr. Naler		53,1
Debtors'	3,4	AIP documents dealing with		53,1
		financial performance targets and		
		PALE curves and adjustment protocol		
Debtors'	5	Materials presented to statutory		53,1
		committees		
Debtors'	6-13	Court documents in support of fifth		53,1
		supplement to KECP motion		
Debtors'	14-25	Other relevant documents		53,1
Debtors'	26	Demonstrative package debtors use at		53,1
		hearings		

I N D E X, cont'd

E X H I B I T S

PARTY	NO.	DESCRIPTION	ID.	EVID.
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Fifth Supplement to KECP Motion, cont'd:

Debtors'	27-31	Various relevant exhibits		53,1
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R U L I N G S

DESCRIPTION	PAGE	LINE
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Debtors' motion for order authorizing	46	14
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implementation of amended and restated

GSA and MRA approved

Debtors' motion for order authorizing	51,	18
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amendment to arrangement with GM approved

Debtors' expedited fifth supplement to KECP	57	1
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motion seeking authority to continue AIP

programs for second half of 2008 approved

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C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a
true and accurate record of the proceedings.

LISA BAR-LEIB

Veritext LLC
200 Old Country Road
Suite 580
Mineola, NY 11501

Date: September 29, 2008